IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 585 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMMED FARUK MOHAMMED ISAMILMUNSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 585 of 2003

MR MM TIRMIZI for Petitioner No. 1

Mr S S Patel, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 22/07/2003

ORAL JUDGEMENT

Rule. Mr S S Patel, learned APP appears and waives service of notice of rule for the

respondent-State.

2. This petition has been filed by the petitioner for release of muddamal vehicle which was seized in connection with Saayla police station C.R. No.II 19 of 2003. It seems that the said vehicle being Tempo Omni Mini Truck 1109 having registration No. GJ-1-AT-4449 was seized in connection with the aforesaid offence and by an order dated 21.3.2003 it was released on temporary basis on the conditions attached to the said order. It seems that the vehicle was again seized on 4.4.2003 for identical offence and therefore, the earlier order was cancelled and the vehicle was taken in custody.

3. Since the vehicle was earlier seized and released, the court found that it was not productive to hand over the muddamal vehicle to the petitioner again since he has committed an identical offence within a short span of 15 days.

4. With a view to challenge the said order, the present petition has been filed by the petitioner stating that he was not present when the offence was committed. He now agrees that he would remain presented as and when the vehicle is put to motion. In this connection, learned APP has relied upon a decision of the Hon'ble Apex Court in the case of Manager, Panjrapole, Deodar v. Chakaram Moraji Nat & Ors., reported in 1999 (1) GLR 557. There the Hon'ble Supreme Court has laid down the criteria and has also formulated some guidelines for dealing with the muddamal articles. There it has been observed that the fact whether the offence alleged is the first offence of the offender or not would also be required to be considered. On the basis of this decision it has been argued by the learned APP that since the offence has been repeated, it would not be just and proper to hand over the muddamal article to the petitioner who is likely to commit the same offence with the help of the vehicle in question.

5. Learned APP has also relied upon a decision of this Court in the case of Ahmedbhai Rasulbhai Shaikh v. State of Gujarat wherein it has been observed that merely because the vehicle will reduce into its scrap value, it cannot be a ground to release at the stage of investigation.

6. It is required to be considered that the vehicle is not required for the purpose of investigation. Moreover, the petitioner has agreed to be with the vehicle as and when the vehicle is put to motion, thereby

there would be a constant check on the illegal user of the said vehicle.

7. On hearing it is found that when the petitioner has agreed to remain with the vehicle, it would be a check on the user of the vehicle. Moreover, if the petitioner has violated the conditions of the earlier order, the State will naturally take appropriate steps for the recovery of the amount of earlier bail bond submitted by the petitioner or by the person concerned. Any way, the vehicle has been seized and it may not be productive to keep the vehicle in an open place where the vehicle is likely to be adversely affected.

8. In that view of the matter, this petition is allowed. The muddamal vehicle being registration No.GJ-I-AT 4449 is ordered to be handed over to the petitioner on temporary basis till disposal of the criminal case in question on the following conditions:-

i. The petitioner shall furnish solvent surety and P.R. in a sum of Rupees Five lakhs to the satisfaction of the trial court.

ii. The petitioner shall not permit user of the said vehicle for any illegal purpose.

iii. The petitioner agrees that he will always accompany the vehicle as and when the vehicle will be put to motion. Therefore, an undertaking shall be given by him before the trial court that he will always be with the vehicle as and when the vehicle will be put to motion and, therefore, it will not be open to the petitioner to take a defence in future that the vehicle is used for any illegal purpose without his knowledge or notice.

iv. The petitioner shall produce the vehicle as per the requirement of the court.

v. The petitioner shall not sell or transfer the vehicle, its ownership or custody till the disposal of the criminal case in question.

vi. The petitioner shall submit authentic copy of R.C. book with respect to the said vehicle standing in his name before the trial court.

vii. The petitioner shall report to the concerned police station on every trip indicating to which

place the petitioner is taking the vehicle and the nature of the goods that may be carried in the vehicle.

Violation of any of the aforesaid conditions would tantamount to forfeiture of the vehicle without reference being made to this Court. It would be open to the court concerned to take steps in accordance with law, in case of violation of the aforesaid conditions or any of them. Rule is made absolue accordingly.

[D P Buch, J.]
msp